



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed that the Tenant is no longer in the unit and that the Landlord no longer requires an order of possession. As a result I dismiss the claim for an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

There is no written tenancy agreement. The tenancy started either August 29 or in September 2016. Although the Parties initially agreed to a monthly rent of \$850.00, the Parties subsequently agreed that rent would be \$800.00 per month payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit.

The Landlord states that the Tenant owes \$157.00 for unpaid February 2017 rent and failed to pay rent for March 2017. The Landlord confirms that on March 2, 2017 the Landlord served the Tenant with a 10 day notice to end the tenancy for unpaid rent (the "Notice") by posting the Notice on the door of the unit. The Notice carries an stated effective move-out date of March 15, 2017 and the Landlord states that the Tenant moved out of the unit either mid-March 2017 when the unit flooded or that the Tenant moved out her furniture at that time.

The Tenant states that the unit was not habitable due to the flood and that she started her move on March 15, 2017, returning the keys on April 1, 2017. The Tenant states that there was another agreement between the Parties for the Tenant to carry out cleaning services for the Landlord in exchange for an hourly rate. The Tenant states that she owes no monies for February 2017 as that rent was covered by the hours the Tenant worked for the Landlord.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is not payable after a tenancy ends.

Based on the undisputed evidence that the Tenant was given the Notice and as that the Notice was not disputed I find that the Tenant was conclusively presumed to have accepted that the tenancy ended and was required to move out of the unit on March 15, 2017. Further given the undisputed evidence of the flood I find that the tenancy ended on March 15, 2017.

As the Parties made a separate agreement for cleaning services that was based on an hourly rate payable and not on any rent reduction I find that the agreement for the provision of services is not a part of the oral terms of the tenancy agreement. The Tenant may seek compensation for any service contract loss in another venue such as small claims court. Based on the undisputed evidence of the terms of rent payable, accepting the Landlord's evidence of unpaid rent for February 2017, and given the undisputed evidence of the flood, I find that the Landlord is entitled to unpaid rent of **\$157.00** for February 2017 and **\$400.00** for March 1 to 15, 2017 rent. As the Landlord has been only partially successful with its application I find that the Landlord is only entitled to recovery of half the filing fee for a total entitlement of **\$607.00** (\$557.00 + 50.00). Deducting the security deposit plus zero interest of **\$400.00** leaves **\$207.00** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$207.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 19, 2017

Residential Tenancy Branch